

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**IMAGEFIRST UNIFORM RENTAL  
SERVICE, INC.**

**Respondent,**

**and**

**LAUNDRY DISTRIBUTION AND  
FOOD SERVICE JOINT BOARD,  
WORKERS UNITED, A/W SERVICE  
EMPLOYEES INTERNATIONAL UNION**

**Charging Party.**

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**Case Nos.   22-CA-161563  
                  22-CA-181197**

**RESPONDENT IMAGEFIRST UNIFORM RENTAL SERVICE, INC.'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

*Submitted by:*

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On April 18, 2017, Administrative Law Judge Arthur J. Amchan (“the ALJ”) issued a decision in the above-captioned case. Respondent ImageFIRST Uniform Rental Service, Inc. (“IF,” “the Company,” or “the Respondent”) hereby submits the following Exceptions and brief in support thereof, pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations.

1. The Respondent excepts to the ALJ’s Conclusion of Law No. 1, at 11:15-16<sup>1</sup>, that: the Respondent violated Section 8(a)(1) of the Act by “[d]ischarging a supervisor and a lead person at the start of the organizing campaign in.” (Tr. 466, 476-77, 539-542, 557-559, 669-671, 673-675, 680-682, R-17, GC-9, GC-10)

2. The Respondent excepts to the ALJ’s Conclusion of Law No. 2, at 11:18-19, that: the Respondent violated Section 8(a)(1) of the Act by “[s]oliciting grievances and impliedly promising to remedy those grievances in a manner different than it did prior to the start of the union campaign.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

3. The Respondent excepts to the ALJ’s Conclusion of Law at No 3, at 11:21-22, that: the Respondent violated Section 8(a)(1) of the Act by “[i]ncreasing the frequency and quality of food provided to employees after the beginning of the organizing drive to discourage support for the Union.” (Tr. 100, 162-165, 204-05, 343, 505-514, 528-29, 655-656, 663-664, GC-14)

4. The Respondent excepts to the ALJ’s Conclusion of Law No. 5, at 11:27, that: the Respondent violated Section 8(a)(1) of the Act by “[m]aintaining an illegal rule in its employee handbook.” (Tr. 122-124, 478, GC-4)

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<sup>1</sup> Herein, references to the hearing transcript or the ALJ decision will be in the form “Tr. page.” References to Respondent’s exhibits will be in the form “R-\_\_\_” and references to CGC’s exhibits will be in the form “GC-\_\_\_.”

5. The Respondent excepts to the ALJ's conclusion, at 3:17-23, that "Respondent's maintenance of its rule against the discussion of payroll information violates Section 8(a)(1) regardless of why it was promulgated or whether it was ever enforced or disseminated.... A reasonable employee would interpret it to warn against discussing wages, hours and benefits, which they clearly have a right to do under Section 7 of the Act, with other employees and with others from whom they wish to enlist support in improving their working conditions." (Tr. 122-124, 478, GC-4)

6. The Respondent excepts to the ALJ's credibility determination, at 4 n. 5, discrediting "Kennedy's testimony at Tr. 536 that he did not know that Cherry's visitors were union representatives. Cherry's emails to Kennedy on July 12 and the morning of July 13 make it quite clear that he knew that Cherry's visitors represented a union." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

7. The Respondent excepts to the ALJ's conclusion, at 5:46-6:2, that "[t]he termination of an unpopular supervisor in order to grant a benefit to discourage union activity violates Section 8(a)(1)." (Tr. 466, 476-77, 539-542, 557-559, 669-671, 673-675, 680-682, R-17, GC-9, GC-10)

8. The Respondent excepts to the ALJ's conclusion, at 6:10-20, that "the Board has made it clear that termination of an unpopular supervisor to discourage union activity is a Section 8(a)(1) violation. It has never stated that the termination must occur in the 'critical period' in order to constitute a violation." (Tr. 466, 476-77, 539-542, 557-559, 669-671, 673-675, 680-682, R-17, GC-9, GC-10)

9. The Respondent excepts to the ALJ's conclusion, at 6:36-38, that "this record establishes that the terminations of Ventura and Farez were motivated by the unlawful purpose to restrain, coerce and/or interfere with union activity and thus violate Section 8(a)(1)." (Tr. 466, 476-77, 539-542, 557-559, 669-671, 673-675, 680-682, R-17, GC-9, GC-10)

10. The Respondent excepts to the ALJ's conclusion, at 7:22-23, that "[t]his document [R-12] shows that Kennedy solicited employee grievances and promised to remedy them." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

11. The Respondent excepts to the ALJ's conclusion, at 8:45-9:2, that "Caitlin Payne's reports of her visits to the Clifton facility make clear that Respondent's 'Lunch with the Boss' program was moribund during the months just prior to the start of the organizing campaign. From the testimony of James Kennedy and Caesar Sanchez, [the ALJ] conclude[d] that the program was revived after July 12." (Tr. 100, 162-165, 204-05, 343, 505-514, 528-29, 655-656, 663-664, GC-14)

12. The Respondent excepts to the ALJ's conclusion, at 9:4-8, that "[t]he record also establishes that shortly after he was hired as an Assistant General Manager, Caesar Sanchez took employees off site for lunch on 3 occasions (different employees each time). Employees were asked to choose what they wanted to eat from a menu. On later occasions, Sanchez had employees choose what they wanted to eat and had it delivered to the plant. Respondent had not given employees such choices prior to the appearance of the Union." (Tr. 100, 162-165, 204-05, 343, 505-514, 528-29, 655-656, 663-664, GC-14)

13. The Respondent excepts to the ALJ's conclusion, at 9:10-15, that "the change in quality and frequency of the food provided to employees after the organizing campaign started as

compared to the months before the campaign were significant enough to constitute an illegal benefit motivated by a desire to discourage employees from supporting the Union.” (Tr. 100, 162-165, 204-05, 343, 505-514, 528-29, 655-656, 663-664, GC-14)

14. The Respondent excepts to the ALJ’s conclusion, at 9:30-31, that “on July 14, Jeffrey Bernstein solicited employee’s grievances by asking employees if they were being treated with respect.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

15. The Respondent excepts to the ALJ’s conclusion, at 9:32-34, that “Bernstein not only impliedly promised to remedy the employees’ grievances about Ventura and Farez, he did so by firing them both.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

16. The Respondent excepts to the ALJ’s conclusion, at 9:36-37, that R-12 “establishes that James Kennedy solicited grievances and expressly promised to remedy them at his meeting with employees on July 20.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

17. The Respondent excepts to the ALJ’s conclusion, at 9:39-41, that “Respondent repeatedly and materially altered its practice of soliciting grievances, impliedly remedying them and remedying grievances after the union organizing campaign began in other respects.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

18. The Respondent excepts to the ALJ’s conclusion, at 9:43-10:4, that “Respondent by James Kennedy offered employees better working conditions in order to discourage employee support for the Union. Kennedy testified that he conducted about 10 “remarkable” meetings with

employees in September and October 2015, Tr. 578. At these meetings he routinely asked employees, “If you could waive a magic wand and could change anything about your job or work environment, what would it be?” Tr. 578, R. Exh. 14. Respondent’s solutions to concerns raised in these meetings were shared with employees at later meetings in September and October. Thus, [the ALJ found] that Respondent not only regularly solicited employee grievances during the campaign and impliedly promised to remedy these grievances, it did so.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

19. The Respondent excepts to the ALJ’s factual conclusion and related credibility determination, at 10:6-16, that “[i]n response to a leading question from his counsel, Kennedy testified that this has been his business practice throughout his tenure with ImageFirst. There is no evidence to support this contention other than the self-serving testimony of Kennedy and Bernstein. Respondent did not call any rank and file witnesses to establish that this solicitation was an established past practice.... Respondent did not call any of these employees, or any other rank and file employees to corroborate the testimony of Kennedy and Bernstein that their practice with regard to solicitation and remedying grievances did not significantly change after the start of the union campaign. This omission leads me not to credit the testimony of Kennedy and Bernstein on this point.” (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

20. The Respondent excepts to the ALJ’s factual conclusion and related credibility determination, at 10:18-27, that “Ulloa, who had worked for Respondent since 2012, testified that Respondent conducted meetings with employees in the morning, but they were not like the meetings conducted since the arrival of the Union. This is consistent with other evidence that

Respondent's supervisors conducted daily "huddles" with employees, G.C. Exhs. 9 and 10, R. Exh. 11. Ulloa confirmed that managers asked how things were going and what employees needed to do their jobs. Sometimes, according to Ulloa, employees received what they asked for and sometimes they did not, Tr. 250-51. Unlike much other employee testimony, there is no employee testimony inconsistent with Ulloa's account of Respondent's pre-campaign meetings." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

21. The Respondent excepts to the ALJ's factual conclusion and related credibility determination, at 10:29-30, that "[t]here is no credible evidence that indicates that employees were solicited by Kennedy and/or Bernstein prior to the union campaign in the manner that they were afterwards." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

22. The Respondent excepts to the ALJ's factual conclusion and related credibility determination, at 11:1-4, that "Kennedy testified that Respondent conducted 'remarkable' meetings in the third quarter of every year. Assuming this is so, there is no evidence as to what was discussed at these meetings prior to 2015. For example, there is no evidence that Respondent solicited grievances in the manner that it did in 2015." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

23. The Respondent excepts to the ALJ's conclusion, at 11:6-9, that "James Kennedy authored an email, R. Exh. 13, which establishes the Respondent's supervisor Luis Betancourt solicited grievances Nadia DeJesus and promised to remedy them. From the lack of any disapproval in Kennedy's email, I infer that Betancourt was acting in accordance with

Respondent's standard practice during the organizing campaign." (Tr. 68-69, 70-73, 121-122, 222-225, 250-251, 313, 556-561, 576-579, 586-588, 615-616, 670-672, R-2, R-3, R-4, R-5, R-14, R-15, R-16, GC-3)

Dated: June 23, 2017

Respectfully submitted,

/s/ Christopher J. Murphy

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